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6 UNITED STATES BANKRUPTCY COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8 In re

9 WARREN and MICHELLE AYERS,

No. 03-11963

10 Debtor(s).
11 _____/

12 Memorandum on Claim of Lagomarsino
13 _____

14 Long after the bar date for general unsecured claims but within 30 days of a payment in settlement
15 of a suit by the trustee against him, creditor Paul Lagomarsino filed a claim for monies paid pursuant to
16 the settlement. The settlement agreement contemplated the filing of a claim. The Chapter 7 trustee never
17 objected the claim, but when Lagomarsino received the trustee's final account and proposed distribution
18 he filed an objection and seeks an order from the court that the trustee honor the claim.

19 Rule 3002(c)(3) of the Federal Rules of Bankruptcy Procedure provides that a claim may be
20 filed within 30 days after the judgment becomes final. The Lagomarsino claim is based on a settlement,
21 not a judgment. There is a split of authority as to whether Rule 3002(c)(3) only applies to judgments, not
22 settlements. Compare *In re Bender Ready Mix, Inc.*, 226 B.R. 337, 339 (Bkrcty. W.D.N.Y. 1998), with
23 *Matter of Mul Corporation*, 60 B.R. 636 (Bkrcty.D.Conn. 1986). However, under *both* decisions the
24 Lagomarsino claim in this case would be allowed as timely: under *Bender*, a claim filed before
25 distribution would be allowed because there is no deadline for a claim resulting from a settlement.
26 Under *Mul*, the claim would be allowed because it was filed within 30 days after payment.

The facts here are just about the same as in *Bender*, and the court elects to follow its

1 interpretation of the law: where no distribution has occurred and no claims bar date is clearly expressed
2 in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure, the claim should be allowed.
3 The court finds no reason for a different result just because the funds for payment came from the debtor,
4 as it was Lagomarsino's obligation.

5 The court find very relevant the hand-written term in the settlement agreement that "Lagomarsino
6 reserves the right to file a proof of claim for amounts he claims are due him." The Trustee argues that he
7 was not agreeing to extend the bar date for claims, but this position assumes (contrary to *Bender*) that the
8 general bar date for claims applies to the Lagomarsino claim. It also means that the trustee tricked
9 Lagomarsino into the settlement, or that there was never any real settlement at all because there never
10 was a true meeting of the minds.¹

11 The court is somewhat surprised by the trustee's position that he is free to ignore a claim he
12 *thinks* is subject to a bar date. Section 502(a) provides that a claim is allowed unless a party objects
13 and § 502(b)(9) provides that a claim is to be allowed unless the court (not the trustee) determines that
14 the claim is not timely. The trustee's assumption in this case seems to be an invitation to a claim on a
15 bond or personal liability.

16 The court finds that Lagomarsino's claim was contemplated by the settlement agreement and not
17 subject to any bar date; accordingly, it will be allowed as timely. However, the court's order will be
18 stayed for 20 days after entry to allow for any litigation over the settlement agreement or a further
19 objection.² The order shall also provide that no distribution of the estate shall be made on account of
20 general unsecured claims until the order allowing Lagormarsino's claim has become final or the court
21 has otherwise ordered after fair notice and a hearing.

23 ¹There is some confusion as to whether the hand-written term was agreed to by both sides. An
24 adversary proceeding may be necessary to resolve this issue, which should not have arisen if the parties
25 had entered into a proper settlement in good faith.

26 ²The court only finds here that the claim is not subject to the general bar date. If the trustee has
any substantive objections, he may still raise them.

1 Counsel for Lagomarsino shall submit an appropriate form of order which counsel for the trustee
2 has approved as to form.

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4 Dated: March 29, 2005

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6 Alan Jaroslovsky
7 U.S. Bankruptcy Judge
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